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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

In re CARLOS ARMANDO  
ALMENDARES  
on Habeas Corpus.

A154313, A155084

(Solano County  
Super. Ct. Nos. VCR219081, VCR229095)

Defendant Carlos Armando Almendares filed consolidated appeals challenging his sentence in case No. VCR229095, and later filed an application for an order construing his motion to file a late notice of appeal (in No. A155084) and his opening brief on the merits, collectively, as a petition for a writ of habeas corpus. Those filings, when construed as a petition, allege that trial counsel provided ineffective assistance when she allowed defendant's October 23, 2017 sentence in case No. VCR229095 to become final, by not timely filing a notice of appeal, even though the sentence included two prior-narcotics-conviction enhancements under Health and Safety Code section 11370.2, subdivision (c) (section 11370.2(c)), for which the court imposed consecutive three-year terms in accord with defendant's plea bargain, and even though, before the sentence was imposed, the Governor had signed Senate Bill No. 180, which amended section 11370.2(c) to provide that prior convictions of the sort defendant had admitted "no longer serve to qualify a defendant for an enhancement under [section 11370.2(c)]." (*People v. Millan* (2018) 20 Cal.App.5th 450, 454.) Senate Bill No. 180 took effect on January 1, 2018 (Stats. 2017, ch. 677, § 1), so it would have applied to defendant on appeal had counsel timely filed an appeal from his sentence in case No. VCR229095. (*People v. Nasalga* (1996) 12 Cal.4th 784, 792.)

We directed the Attorney General to respond to defendant's application to construe his prior filings as a habeas petition and to indicate whether, if the application were granted, respondent would "submit the matter on respondent's brief filed on April 24, 2019, or wish[] to file a further brief in response to the petition." The Attorney General filed a letter agreeing that defendant's motion and opening brief can be construed as a petition for writ of habeas corpus and, moreover, consenting to the grant of habeas relief, in case No. VCR229095 only, on an expedited basis.

Accordingly, we construe defendant's motion for permission to file late notice of appeal and opening brief, collectively, as a petition for writ of habeas corpus, and we grant that petition with regard to No. VCR229095. The superior court shall forthwith vacate the sentence in No. VCR229095, impose a new sentence that does not include any section 11370.2(c) enhancement, amend the abstract of judgment accordingly, and immediately forward a certified copy of the amended abstract of judgment to the Department of Corrections.

This decision shall be final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).) Pursuant to the parties' stipulation, the remittitur in this proceeding shall issue immediately. (Cal. Rules of Court, rule 8.272(c)(1).)

POLLAK, P. J.

WE CONCUR:

STREETER, J.  
TUCHER, J.